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**From:**

**Sent:** Friday, February 13, 2009 12:06:57 PM

**To:**

**Cc:**

**Subject:** RE: Loan Repayment

My understanding is that the sentence in section 3122 which reads "Nothing in this paragraph shall be construed to affect the Secretary's authority to determine under subsections (a) and (b) of section 3121 whether any such service constitutes employment, the periods of such employment, and whether remuneration paid for any such service constitutes wages" controls the result in your case.

I understand that the above-referenced sentence was added to 3122 later (some time after enactment of the original section 3122) in order to clear up the type of confusion that you are experiencing. We read this sentence as meaning that, it doesn't matter what the heads of other federal agencies might think about whether particular payments are wages or particular services are employment, the final authority for making these determinations rests with the Secretary of the Treasury. I haven't had time to track down whatever legislative history there might be concerning the addition of that sentence, though.

When you say that "the taxpayer has always agreed with the IRS's position that the loan repayments are subject to income tax and employment tax withholdings," what determination are you referring to? The determination that the agent made in this case? Thanks.